

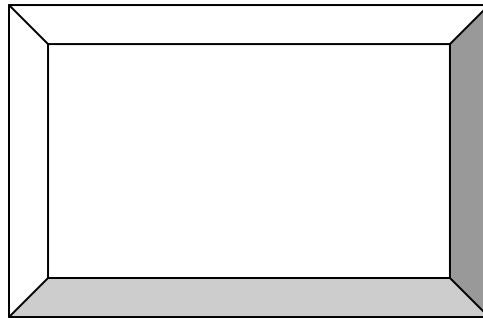


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DEPLOYMENT & SRP HANDBOOK

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This handout is intended as general information only and not a substitute for professional legal advice. The information contained in this Handbook may not apply to every soldier as each situation is fact specific. If you have questions, seek JAG advice immediately. Sometimes, depending on the nature of the situation you may be required to seek the help of a civilian attorney.



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I. DEPLOYMENT & SRP INFORMATION PAPER

1. Services provided. The Office of the Staff Judge Advocate (SJA) provides the following services to soldiers who are deploying:

a. Legal Documents: We provide soldiers with Wills, Powers of Attorney (including Tax and Child Care Powers of Attorney), Medical Directives and Living Wills.

b. Servicemember's Civil Relief Act & USSERA. We provide information on, and assistance in invoking, provisions of the Servicemember's Civil Relief Act (SSCRA) as well as the Uniform Services Employment and Reemployment Rights Act (USERRA).

c. Tax Filing Information. We only provide general information on tax filing and we also will provide and execute tax Special Powers of Attorney. FE Warren AFB provides a tax assistance center every tax season January thru April 15th, approximately. You may call their JAG Office at (307) 773-2256 for the Tax Center number for more information.

2. Wills.

a. We highly encourage all soldiers and spouses to have at least a Will. Having a Will is particularly important for soldiers who have minor children, especially if there has been a separation or divorce, or children born outside of a marriage.

b. In a Will, you may appoint a guardian for any children under 18, and also set up a trust that enables you to select who would take care of any property going to the children up to whatever age you think is adequate to allow for the child/children to mature, and thus hopefully be able to manage the money wisely. A Will allows you to designate who will collect and distribute the property, and also allows you to talk about your funeral preferences, although funeral preferences are not binding.

c. The SJA Office only provides Wills and Wills with testamentary trusts (trusts that are set-up to take care of property for children until a given age). We do not provide living trusts (*inter vivos* trusts). A living trust is recommended when a soldier's estate (counting life insurance and other assets) is approaching the \$2 million dollar mark. The SJA Office will help soldiers determine whether a living trust is needed. If a living trust is recommended, the SJA will refer the soldier to a civilian attorney, at the soldier's expense. If there is not enough time for the soldier to get a living trust, the SJA will provide a Will as an interim measure.



d. Below are some questions for you to consider prior to sitting down with an attorney and information you will need to bring:

- 1). Bring a copy of your SGLI or State Sponsored Life Insurance form;
- 2). Know the size, and composition, of your estate;
- 3). Decide how you want your property to flow upon your death (i.e. to your spouse, and if your spouse is not around then to your children, etc.).
- 4). If you have minor children, decide (and usually discuss with your spouse if you have one) who you want to appoint as guardian (person who cares for the children if you and your spouse are not around). Also decide who will be in charge of taking care of the children's inheritance until they reach whatever age you determine as the age the children can take control of the property (this person is commonly known as the "trustee"). This individual can be, but is not required to be, the same person as the guardian.
- 5). Decide what age your children can take control of their inheritance. Up until this age, a custodian or trustee can control the property and use it for the benefit of the child (health, education, welfare, etc.).
- 6). Decide if you want to discuss funeral arrangements in your will (buried, cremated, military honors, etc.).

3. Powers Of Attorney (Non-Medical).

a. Overview. A "power of attorney (POA) is one of the most powerful legal documents you can give to another person. A POA authorizes a designated individual to act on your behalf as your agent, or "attorney-in-fact." Transactions performed by your agent as authorized by your POA are legally binding on you. There is no way to guarantee your POA will not be misused. For this reason, a POA should be used *only when absolutely necessary*. Moreover, your agent should be mature, trustworthy and able to exercise good judgment. While there is no law or regulation specifying when you must grant a POA, another person cannot act for you in a business or legal matter without one. Thus, if you are going to be unable to act for yourself due to an overseas or remote assignment or a TDY, you should consider whether you need to give someone your POA. Accounts held jointly do not require the other signatory to have POA to use and/or access the account, accordingly, soldiers with all of their account held jointly would not likely need a general POA.

NOTE: In Wyoming, our military prepared Powers of Attorney must be accepted by third parties (banks, creditors, etc.). The statute that covers this is Wyoming Statute § 19-11-201. If you have problems with our Power of Attorney being accepted, please call the JAG office at (307) 772-5254.

b. General Power Of Attorney (GPOA). A GPOA gives your agent the right to take almost any action on your behalf. With a GPOA, your agent could sell or mortgage your property, borrow money and use your credit cards to incur debt in your name, sign contracts that are binding on you, and access your checking and savings accounts. A



GPOA can be easily abused by an agent. You may only find out about your agent's unauthorized actions when it is too late to change the obligation. Given the above, a GPOA is only appropriate where prolonged absence or unavailability is anticipated and actions to protect your property or family's welfare probably will be necessary. *As a rule, you should never grant a GPOA if a Special Power of Attorney would be sufficient.* Bring not only the proper name of any person you want to designate as your attorney in fact, but also their address.

c. Special Power Of Attorney (SPOA). A SPOA authorizes your agent to perform a certain, specified acts. These can include, but are not limited to:

- * shipping or receiving household goods
- * selling or shipping your auto
- * cashing your paycheck or **tax return**
- * managing real property
- * managing investments
- * borrowing money
- * handling litigation
- * make gifts
- * buying or selling a house
- * entering into a contract agreement
- * obtaining medical care for your children
- * form corporations
- * insurance transactions
- * handle government benefits
- * selling a business

A Special Power of Attorney permits a much narrower exercise of agent powers. It therefore minimizes the opportunities for abuse to that specific subject area. If you are planning on selling your home while deployed, lenders do not like general powers of attorney and invariably will want a special power of attorney that is crafted just for that particular transaction. Again, bring the name and address of any person you want to appoint as your attorney-in-fact for a SPOA.

4. Terminating A Power Of Attorney. We recommend that the POA have a reasonable expiration date. For a deployment, 18 months or two years is probably reasonable. It is the policy of the SJA office that POA's that are immediately effective will not be executed for a period of more than two years. If needed, you can renew your POA upon return by executing a new document. Normally, your POA is automatically terminated if: you die; the expiration date contained in the POA is reached; your agent dies; and if you revoke the POA. You can revoke the POA by: destroying ALL copies, and informing your agent of the revocation. The SJA Office also recommends that you consult with an attorney to prepare and execute a written Revocation of POA to be given to any person who dealt with or might deal with your agent, once you are terminating your POA. You may also take more formalized methods to terminate your POA. Specifically, you may file a notice with the County Court in the County that you reside. If you decide to file a copy of the termination, attach a copy of the power of attorney to the termination notice. In Wyoming, this provides "constructive notice" to everyone that the power-of-attorney is revoked, under Wyoming Statute § 3-5-103. If you



are conducting this in another state, check the particular's state law or contact the JAG Office for assistance.

5. Medical Directive (Durable Medical Power Of Attorney). A Medical Directive allows you to appoint a person who will make medical decisions for you if you become unable to make your own decisions because of some type of incapacity. The most obvious choice is your spouse, if you have one. Even if you do, it is recommend that you also appoint a back-up in the event that your spouse is unable to make decisions for you. Bring the names, addresses and telephone numbers of any person you will appoint to make medical decisions for you.

5. Living Will. A "Living Will" is not a "Will" but rather a directive to medical personnel (and your agent if you have a Medical Directive) that if you are unable to communicate your desires, because of some type of incapacity, and you have an incurable injury, disease or illness certified to be a terminal condition or an irreversible coma, that you direct that life-sustaining procedures be withheld and withdrawn and that you be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to keep you comfortable and to relieve pain. Allows you to explicitly state your choice concerning whether you desire procedures to prolong life, or to withhold procedures if you are in an incurable and irreversible terminally condition or in an irreversible coma. The need for a Living Will is entirely a personal decision.

6. Advanced Medical Directive. Wyoming law has recently changed by combining the Medical Directive and Living Will into one document referred to as an "Advanced Medical Directive." It allows you to explicitly state whether you want the following provided or withheld: artificial (feeding tube) nutrition and artificial (feeding tube) hydration.



II. SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA)

1. The SCRA.¹

a. Applicability. The SCRA applies to servicemembers who are in an active duty status under 10 U.S.C. § 101(d)(1). This includes members of the Armed Forces (Army, Air Force, Navy, and Coast Guard), as well as the Reserves and National Guard when called to active service under Title 10 federal orders. The SCRA also applies to commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration in active service. Lastly, it applies to National Guard personnel performing duties under 32 USC Section 502(f) for more than 30 days when responding to national emergencies (like the airport security duty performed after the 9-11 attacks by members of the States' National Guards).

b. 6% Interest Cap. Upon entering one of the qualifying military duty statuses stated above, servicemembers may reduce annual interest rates on their obligations to no more than 6%. Interest exceeding 6% is forgiven, never to be repaid. Payments must be reduced to reflect the new 6% (or lower) maximum interest rate (the creditor cannot keep the old rate in place and essentially accelerate the loan). The 6% cap applies to obligations in the servicemember's name as well as obligations that are jointly in the names of the servicemember and spouse. The interest rate reduction applies from the date the servicemember receives military orders until the date the servicemember stops serving in the qualifying status (Title 10 or 32 USC 502(f)). This protection, however, applies only to obligations existing prior to the servicemember entering the qualifying active service. It does *not* apply to obligations made after entering the qualifying service (note: the old law did not apply to federally guaranteed student loans and the new law probably should be interpreted in the same way). To implement this protection, the servicemember should send the creditor notice that the servicemember is entering qualifying military service, with a copy of the servicemember's orders and the date the servicemember received the orders. *See*, Sample Letter to Creditors attached hereto. The letter should ask the creditor to reduce the annual interest rate (and request a new payment or amortization schedule) to not more than 6% starting on the date of receipt of orders (i.e. the date "called to military service"). Once given notice, the lender may only lawfully refuse to reduce the rate by going to court and proving that the servicemember is not "materially affected" by entry into military service. Servicemembers are NOT required to prove to the creditor that they are now making less money, or that they are "materially affected," a term undefined in the law. Servicemembers are only required to give a notice, orders, and a request for the cap to apply in the absence of a contrary judicial ruling.

NOTE: Notwithstanding the above, **AGR soldiers** may have trouble invoking the 6% reduction. Lenders use the Department of Defense Manpower Data Center (DMDC)

¹ Public Law 108-189; 117 Stat. 2835.



to determine the date of active duty. They do this to determine whether the loan was taken out prior to entering active duty. Unfortunately, the DMDC site will list the AGR's date of entering AGR status (active service date) as the date of entering "active duty." An AGR's "active service" date does not qualify as "active duty" and has no relevance for SCRA purposes. The Wyoming JAG Office has contacted the Office of the Secretary of Defense legal office attempting to resolve this issue. In the meantime, lenders may erroneously refuse to lower interest rates of AGR's if the loan date is subsequent to the AGR's date listed by DMDC. If this happens, contact the Staff Judge Advocate Office at (307) 772-5254. The DMDC cite is located at: <https://www.dmdc.osd.mil/scra/owa/home>

c. Terminating Premise Leases. This provision applies to both the servicemember and the servicemember's dependents; but not to cohabitants. The servicemember and/or dependents may terminate leases entered into prior to entering into the qualifying military service. Once the servicemember is on active duty status, this same provision can be invoked upon receiving permanent change of station orders or if deploying with a military unit for at least 90 days. This provision applies to residential, professional, business, agricultural and similar types of leases. To terminate a lease, the servicemember or dependent provides **written notice** of termination **and a copy of the military orders**. For leases providing for monthly payment of rent, termination is effective thirty days after the first date on which the next rental payment is due, once notice is given. Example: If notice is given on the 5th, and rent is due the 15th of each month, then termination will be effective 40 days after notice. For all other types of leases, once proper notice is given, termination is effective on the last day of the month following the month in which the notice was delivered. The landlord must return advanced rents paid and account for unused portions of the security deposit as required by law. Landlords may be entitled to an "equitable offset" for expenses incurred as a result of an early military termination (realtor fees, advertising costs, etc.). Servicemembers are encouraged to give the landlord as much advance notice as possible; but sometimes the servicemember's date of departure changes due to military necessity.

d. Protection Against Eviction. The protection applies to both servicemembers and dependents, but not to cohabitants. The premises must be used as a residence. This protection only applies to rental units having a monthly rent of \$2,400 (adjusted every two years according to the Consumer Price Index, initially on January 8, 2004 to \$2,465) or less. During the period of qualifying military service, the landlord cannot evict without a court order (in Wyoming, a court order is also required under Wyo. Stat. §§ 1-21-1001 et seq., and 1-21-1211). The servicemember or dependent may petition any court to stay any eviction proceeding for up to 90 days, or longer if the court decides a longer period is fair. The court may also make any other adjustment needed to preserve the interests of all parties to the lease.

e. Protection From Foreclosure. Foreclosures cannot be accomplished during the qualifying military service (or even within 90 days afterward) unless approved by a court. Servicemembers and dependents may apply to the court for a "stay" or for other relief.



f. Installment Contracts & Auto Leases.

(1). Installment Contracts (Purchase Or Lease). If a servicemember makes a deposit or installment payment before entering qualifying military service, on a contract to purchase or lease real or personal property (including motor vehicles), then the SCRA provides the servicemember protections from the creditor. Specifically, the creditor may not rescind, terminate or repossess for any breach occurring before or during the servicemember's qualifying service without a court order. To invoke this protection, the servicemember must notify the creditor of the servicemember's entry on active duty status and the applicability of the SCRA protections. If there is a law suit, the servicemember may seek a stay of the proceedings and/or other relief from the court as in any other civil suit.

(2). Auto Leases (Terminating). Unlike the SSCRA, the SCRA allows servicemembers to terminate auto leases under certain circumstances. Specifically, if the servicemember entered into a lease *prior to* entering onto active duty for 180 days or more; or once on active duty receives permanent change of station orders outside the continental United States; or deploys with a military unit for 180 days or more, then the servicemember may terminate the lease. To terminate the lease, the servicemember simply needs to give notice with a copy of the qualifying military orders and deliver physical possession of the vehicle back to the lessor within 15 days of the notice to terminate. *See, sample Letter Terminating Lease.* The lessor may not impose any early termination charge, but may charge for any taxes, summonses, damages and title and registration fees and any other contractual obligation or liability of the servicemember under the agreement, including charges for excess wear, use and mileage. Any advanced payment made by the servicemember must be returned; and if the servicemember used the vehicle during the last month without payment, these charges need to be computed as a share of the monthly lease payment and paid for by the servicemember. **If a soldier and/or dependant plans on terminating an auto lease under this provision, they should contact the JAG Office for assistance.**

g. Stay Of Court Proceedings. Servicemembers may delay (called a "stay") civil court hearings (personal injury, divorce, child custody, etc.) including administrative hearings as well as bankruptcy debtor/creditor meetings. The SCRA does not apply, however, to criminal or traffic proceedings. If properly requested, the stay is for or at least 90 days during the period of active service (and may also be requested within 90 days after active service). Stays are NOT automatic. To obtain a stay, two requirements must be met: 1). The servicemember must send a letter to the court setting forth why military duty is materially affecting the servicemember's ability to adequately defend his/her rights; and, 2). The servicemember's commander must send a letter to the court confirming the military duty, and confirming that military leave is not authorized for the servicemember at the time of the letter (assuming that is true). Since servicemembers accrue leave at the rate of 2-1/2 days per month but must have permission of their commander to use that leave, commanders should offer their best assessment of when leave may be granted, reserving their right not to grant leave at that time if military



necessity prevents it, but expressing a willingness to keep the court advised. The court cannot consider the servicemember's request for a stay as an appearance, nor can the court consider it as a waiver of any substantive or procedural defense, including lack of personal jurisdiction. If the court grants a stay, but the servicemember needs additional time, the servicemember must apply once again for extension to the court, again including a letter from the commander. If the initial requirements are met for a stay but the court refuses an additional stay, the court must appoint an attorney to represent the servicemember's interests. Stays do not apply to soldier's spouses or dependents unless it can be demonstrated to a court that the soldier's absence materially affects their ability to continue the action.

h. Default Judgments. The SCRA provides significant protections against default judgments and any execution, attachments or garnishments that may have been adjudicated while the servicemember was on active duty or for 60 days after active service ends. For any civil action against an absent servicemember, the plaintiff is required to file with the court an affidavit stating whether or not the defendant is in military service with facts to support the affidavit; or, if the plaintiff is unable to ascertain the defendant's military status through the Defense Manpower Data Center or other source, the plaintiff is required to file an affidavit stating this. Sometimes, the act requires the court to appoint an attorney in a servicemember's absence. An attorney in fact may also represent the servicemember's interests. If a default judgment is obtained against a servicemember, the servicemember has 90 days from the termination of service to file a motion to vacate that judgment with the court. Servicemembers who learn of default judgments against them should contact their Staff Judge Advocate's Office for legal assistance.

i. Health Insurance Reinstatement. Upon termination of active duty, a servicemember is entitled to reinstate any health insurance policy covering the servicemember (and dependents if covered under servicemember's insurance) the day before entering into active duty. This protection includes a prohibition against exclusion and waiting periods, even if the servicemember has some sort of medical condition so long as the following three circumstances apply: 1). The condition arose before or during the military service; 2). An exclusion or waiting period would not have been imposed under the original coverage; and, 3). The Veterans Administration has not determined the condition as a disability incurred or aggravated in the line of military duty.

j. Residency. Servicemembers are not residents of a particular State simply because of entry into active duty, or simply by being stationed in a particular state. The Servicemember's Civil Relief Act provides that military members may only be taxed on their military pay by their state of residence. The question of residency therefore assumes great importance, as states are generally eager to tax as many individuals as possible. The general rule of thumb is that a military member remains a resident of the state from which they joined the military, unless they have taken steps to become a resident of another state. This rule does not apply to non-military spouses; they usually become a resident of the state in which they live. Also, if a military member has non-



military income, the state in which he or she lives may tax that income, even if the military member is a resident of a different state. There is no magic factor to determine whether a taxpayer is a resident of one state or another. The general rule is that legal residency is established when an individual is physically present in a state AND has the intent to permanently reside in the state. "Intention to permanently reside" can be shown through several factors: ownership of real property; voter registration; vehicle registration; driver's license; and declaration of legal residence on legal documents (including DD 2058, used by the military). One of these factors by itself would probably not be enough to change residency, but if a service member moved to a state and registered to vote, bought a house, registered her car, got a new driver's license, and registered her children in the local schools, she would most likely be considered to be a resident of the new state. For further information about residency, please contact the Office of the Staff Judge Advocate.

2. Protections For Exercising SCRA Rights. Creditors cannot take adverse actions against servicemembers and their dependents simply for invoking the protections provided under the SCRA. For instance, they cannot report to a consumer credit reporting agency that the servicemember or dependent has invoked rights under the SCRA. Any attempt to make such an adverse entry into a credit report should be addressed under the Fair Credit Reporting Act.

3. Use this handout simply as a source of general information. Do not use it as a substitute for seeking legal advice from either the JAG office or a civilian attorney. If you have any questions concerning any of the above, please feel free to contact the Staff Judge Advocate Office at (307) 772-5254.



III. EMPLOYMENT PROTECTIONS

Employment Protections for Military Service Members

By Francisco L. Romero* and Kevin M. Cieply**

Answering the Nation's call to military service has placed significant burdens on both employees and employers. Under today's high military operational tempo, more and more duties have been shifted to the National Guard and Reserve forces. Currently, the National Guard stands at about 450,000 members and makes up about 40% of our total force. As of September 2003, there were 181,498 Guard and Reserve members deployed around the world for military operations.¹

These "citizen-soldiers" are now being asked to leave their civilian careers for long periods of time. Just recently, the pentagon announced that Guard and Reserve members serving in Iraq or Kuwait will be extended to serve for a full year.²

When employees suddenly leave their jobs and do not return for a year, it is an understatement to say that problems may frequently arise, for both the employee and the employer. Given this environment, today's general practitioner needs at least a basic understanding of what employment protections, if any, exist for the benefit of these service personnel. This article will survey the laws, both state and federal, that are applicable to these service members. Part One of this article will discuss the federal law—Uniform Services Employment and Reemployment Rights Act. Part Two will address the state law—Military Service Relief Act of 1998 ("MSRA").³ Part Three will discuss which law to use under certain circumstances. And lastly, Part Four will discuss different entities that provide assistance, as well as conclude the article.

A. Part One: Federal Law—The Uniformed Services Employment and Reemployment Rights Act.

For past sixty-three years, some form of federal law has protected reemployment and related rights of service members. In 1940, Congress passed the Selective Training and Service Act.⁴ The purpose of this 1940 Act was to "provide for the common defense . . . of the United States . . ."⁵ Part of the act included the right of reemployment "designed to protect the veteran"⁶ and ensure that those "called to the colors [were] not . . . penalized on . . . return by reason of . . . absence from . . . civilian job[s]."⁷ Today's version of that early legislation is the Uniform Service Employment and Reemployment Rights Act of 1994 (USERRA). The stated purposes of USERRA remains strikingly similar to its 1940 ancestor.

The three explicit purposes of USERRA are to: encourage reserve military service by eliminating its negative impacts on civilian careers; guarantee prompt reemployment after reserve duty; and, prohibit employers from taking discriminatory action against employees who service, based on the military service. The provisions of USERRA apply



to all persons who perform “service in the uniformed service.”⁸ Uniformed service includes not only the active armed forces (Army, Air Force, Navy and Marines) and the Reserves, but also the National Guard in an active duty status as well as during their one weekend a month and fifteen days a year of training.⁹ It also includes the Public Health Service.¹⁰

USERRA explicitly covers service members who volunteer for military service. All military members receive military orders for their service. There is no legal distinction between military members who initially volunteer for duty from those that are involuntarily called to duty.¹¹

Discrimination and Retaliation

USERRA’s first substantive provision, Section 4311, articulates an overarching purpose of preventing discrimination and retaliation based on an employee’s military service. It is a comprehensive provision with fairly sweeping language. Specifically, it prohibits employers from denying initial employment, reemployment, retention, promotion, or any employment related benefit to an employee on the basis of the employee’s military service.¹²

Employers violate this anti-discrimination provision, any time they use military affiliation as a “motivating factor” in taking an adverse action against the employee.¹³ The initial burden to establish that military affiliation was in fact a motivating factor, is on the military member. If the employee/military member successfully makes a *prima facie* case, the burden then shifts to the employer. The employer must then prove that the military affiliation of the employee had no effect in the employer’s decision making process.¹⁴

Because of the breadth of Section 4311, it should be considered in every case where USERRA is invoked. Look to Section 4311, especially, when there is no other section directly on point.

Reemployment Rights

USERRA affords service members the right to be reemployed and receive all other rights and benefits of employment following the end of military service. In order to qualify for reemployment the service member must have provided advance written or verbal notice to the employer of the employee’s service obligation, the cumulative length of the employee’s tour cannot exceed 5 years, and the employee must report to or resubmit an application to the employer.¹⁵ There are a number of exceptions to these requirements, such as “military necessity” precluding advance notice to the employer.¹⁶ In addition, soldiers hospitalized or injured while in the line of duty, may extend the 5 year period of service for the period of recovery, up to an additional 2 years.¹⁷ The attorney assisting a service member in this area should thoroughly review section 4312’s exceptions if the client does not meet one or more of the requirements.



Employers do not have to reemploy a service member if the employer's circumstances have changed significantly enough to make reemployment "impossible" or "unreasonable," or reemployment would cause a "hardship" on the employer with respect to certain service members, or the employment position vacated by the service member was for a brief, nonrecurring period with no reasonable expectation of continued employment.¹⁸ The burden of proving the applicability of one of these reemployment exceptions is on the employer.¹⁹

Protection From Being Fired

In an attempt to protect service members from disingenuous employers who may attempt to thwart the USERRA protections by simply re-employing, and then shortly thereafter firing the employee, the USERRA law prohibits an employer from firing a service member without cause for specified periods of time. The time limits hinge on the amount of military service the employee served. Specifically, an employee cannot be fired for a period of one year from the date of reemployment if the employee's tour was for more than 180 days, or a period of 180 days if the service period was for more than 30, but less than 181 days.²⁰

Character Of Service

To receive the protections of USERRA, a service member must receive an Honorable discharge or a discharge Under Honorable Conditions (General). Service members who are separated with an Other Than Honorable discharge, Bad Conduct discharge, separated in lieu of being court-martialed or separated by being dropped from the rolls for reasons of absence without leave, are not eligible under USERRA.²¹ To determine eligibility, employers may require the service member to provide a discharge certificate for the applicable time period.

Employment Rights and Benefits

Reemployed service members are entitled to retain seniority status and all rights and benefits tied to seniority (eg. those that accrue based upon length of service) and any rights or benefits not based upon seniority that are available to other employees for paid or unpaid leaves of absence (both those that were available before the service-related absence and those that became effective during the service-related absence).²² Non-seniority based leave-of-absence benefits are waivable if the service member provides unambiguous written notice to the employer that he or she does not intend to return to work after the service obligation ends.²³ Service members may be required to pay the cost of benefits that are normally funded in part by the employee during a leave of absence.²⁴

The employee's previous seniority level and the commensurate benefits are only a requisite minimum that the employee receives, however. In addition, the employee is entitled to any "additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed."²⁵ This clause is often



referred to as the “escalator principle.”²⁶ It is a useful metaphor in understanding the effect of this law. While the employee is absent serving military duties, the employee’s seniority and related benefits continue their natural progression forward—just as if the employee were on the job. In *Alabama Power Co. v. Davis*, 431 U.S. 581, 584 (1977), the Supreme Court of the United States described the effect of similar language as: “[t]he veteran ‘does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war.’”²⁷

The employment situation for the military member/employee, therefore, does not stay frozen in time. But rather may, and perhaps very likely will, increase in quality as the military member/employee is away. The situation depends on the particular terms of employment, the type of right/benefit involved, and whether the employee would have received the benefit if the employee had never left for military service.

To determine whether a particular right/benefit falls within the escalator principle, courts use the following two-part analysis: “First, there must be a reasonable certainty that the benefit would have accrued if the employee had not gone into the military service. Second, the nature of the benefit must be a reward for length of service rather than a short-term compensation for services rendered.”²⁸

The Supreme Court of the United States has applied the escalator principle to award employees increased benefits in areas such as pension,²⁹ severance pay,³⁰ and seniority.³¹ One benefit that may not fall within the escalator principle is vacation benefits, if they are tied to work actually performed over a period of time, as opposed to longevity.³²

An employer is also prohibited from forcing the service member to use accrued vacation, annual leave, or similar time-off programs, during the period of the service tour. An employee who wishes to use such accrued leave during their tour, however, may do so upon request.³³ This option allows service members to “double-dip” or supplement their military pay with accrued paid leave time which may be desirable when a service member stands to lose accrued leave during their tour under a “use it or lose it” policy.

In addition, health benefits must be continued during a service member’s absence from work even if the employer is COBRA exempt.³⁴ In the case of an employee whose health coverage will terminate due to military service, the employee can elect to continue coverage for up to 18 months after their work absence begins or the period of service marked by the day after the date upon which employee fails to apply for reemployment, whichever is shorter.³⁵ However, the employee has to make premium payments to continue the coverage. Exclusion and waiting periods are waived upon reemployment if the plan coverage would have been provided to the employee if he or she had not been absent for military duty.³⁶



Other provisions governing pension and retirement plans are technical and beyond the scope of this article. An attorney providing advice in this area needs to review the provisions of section 4318 carefully.

Enforcement

The Secretary of Labor is the principle entity responsible for enforcing USERRA. The Secretary accomplishes this primarily through the Department of Labor's Veterans Employment and Training Service (VETS).³⁷ If a service member thinks his or her employer has violated USERRA, a written complaint may be filed with VETS summarizing the allegations forming the basis of the complaint.³⁸ The VETS is required to investigate each complaint. And if the allegations are substantiated, the Department of Labor may engage in a conciliation process to resolve the employer's non-compliance.³⁹ If the conciliation process does not work, the service member must be informed of their right to proceed under separate enforcement provisions of the Act.⁴⁰

In the case of a State or private employer, where a conciliation proceeding was attempted through the Department of Labor to no avail, the service member may ask the Department of Labor to refer the matter to the United States Attorney's Office for consideration.⁴¹ If the U.S. Attorney's Office is convinced that the service member is entitled to the rights or benefits sought, the U.S. Attorney may commence a lawsuit on behalf of the service member in the name of the United States against the offending employer.⁴² These suits are brought in federal district courts.⁴³

A service member is not required to file a written complaint with the Department of Labor. Instead, a service member may initially opt to pursue a private cause of action on their own.⁴⁴ Similarly, if the service member does initially go through the Department of Labor but the U.S. Attorney's refuses to represent the service member, a private suit may be commenced.⁴⁵

A suit against a State employer may be brought in any state court of competent jurisdiction as determined by state law; or, in any federal district court wherein the state exercises authority. Suits against private employers must be pursued in federal district courts.⁴⁶

The judicial remedies available to service members include: 1) court-ordered compliance with USERRA; 2) an award of compensation for lost wages or benefits sustained by the service member as a result of the employer's violation; 3) liquidated damages equal to compensatory damages for willful violations (double damages); 4) an award of reasonable attorney's fees, expert witness fees and other litigation expenses (only with respect to a private suit).⁴⁷ Fees and costs cannot be taxed against the complaining service member, regardless of the outcome of the suit.⁴⁸ State defendants are subject to the same remedies available against private employers, and the term "private employer" includes political subdivisions of a State, such as a county or municipality.⁴⁹ It is also worth noting that state statute of limitations do not apply to a



USERRA action.⁵⁰ In fact, there is no explicit statute of limitations for filing a complaint under USERRA. Court may, however, invoke the doctrine of laches if the service member waits an unreasonable amount of time to file suit.⁵¹

A. *Part Two: State Law—Wyoming’s Military Service Relief Act.*

Wyoming law provides very similar employment protections for military personnel as USERRA. The Wyoming version of USERRA is codified in the Military Service Relief Act of 1998 (“MSRA”).⁵² Under the MSRA, the declared policy of the State of Wyoming is “that its citizens who serve their country and state and who leave their employment,⁵³ homes and education shall not be penalized nor economically disadvantaged because of such service.”⁵⁴ Similar to USERRA, the purpose of the MSRA is “to prevent members [of the military] from being disadvantaged and to prohibit discrimination against persons because of their uniformed service when they return to civilian life.”⁵⁵

In the areas of anti-discrimination, retaliation, reemployment, seniority and related benefits (including an escalator clause), the MSRA is very similar to USERRA. While there are slight differences in these areas, the differences are not enough to warrant separate discussion.⁵⁶ The areas of the MSRA that do contain significant differences from USERRA, are discussed below. The most significant difference between the MSRA and USERRA, concerns state, city and county employees.

State, City and County Employees.

Service members employed by the State of Wyoming or any political subdivision, including municipalities and community colleges,⁵⁷ enjoy the same reinstatement rights as described under USERRA above, including the right to accrued seniority and other benefits.⁵⁸ An added benefit these employees enjoy is the right to paid military leave for a period of 15 days annually for military training (training such as annual training that national guardsmen conduct each year).⁵⁹

This leave is in addition to any other type of leave the employee is entitled to. Some community college and school district policies currently violate this provision by requiring the employee to surrender their military reserve pay, whenever the agency pays for military leave. This practice not only violates the explicit language of W.S. § 19-11-108(a), but also misunderstands the nature of reserve pay. Military pay received for reserve training is *federal* money.⁶⁰ It does not come from the State of Wyoming. The Defense Financial Accounting Service (DFAS) controls this pay. It is improper for a state entity to force its employees to turn over this pay without a proper garnishment order served on DFAS and collected therefrom.

In addition to the paid military leave, if employed for 1 year or more, the employee may also take military leave in excess of 15 days per year in an unpaid status, without loss of other employment rights such as seniority.⁶¹ This leave time is in addition



to not only the paid 15 days of military leave, but also in addition to any vacation time the employee is normally entitled to.⁶²

Miscellaneous Benefits.

Service member employees are entitled to continued coverage under life, health and accident insurance policies, provided he or she continues to pay the applicable premiums that would have been deducted from their paycheck.⁶³ Dependents are also included in this protection. In addition, an employee who returns to work (and dependents) must have his or her insurance coverage reinstated if application is made for the same (including coverage for preexisting conditions).⁶⁴

Employees are also entitled to receive up to 4 years of “creditable service” during the period of their tour of duty toward vesting and the computation of benefits in the employer’s retirement plan.⁶⁵ Employees may also, if permissible under applicable tax laws, continue to contribute funds to their retirement plan during the period of their service.⁶⁶ In addition, all private employers who offer pension benefit plans, individual account plans or defined contribution plans, are required to credit the employee with the period of military service for purposes of retirement eligibility and vesting.⁶⁷ State employees who do not elect to make contributions to the state retirement system during their service tour are also entitled to credit for their military service for purposes of establishing retirement eligibility and computing benefits upon payment of a sum equal to the contributions that would have been paid by the employee had they not left state employment.⁶⁸ However, these retirement provisions do not apply to state employees who participate in the state deferred retirement system.⁶⁹ A state employee’s service period is also credited for purposes of determining eligibility for death and survivor benefits.⁷⁰

Service personnel who hold valid licenses required by the state or any public/governmental entity have up to 90 days following release from service to pay any fee associated with the license.⁷¹ Persons who hold licenses related to their profession or occupation are also exempt from paying reinstatement and renewal fees during the period of service, excluding fees for the year the employee is released from duty.⁷² The employee must pay the reinstatement/renewal fee within 90 days following release from service.⁷³ In addition, any continuing education requirements for a profession are also suspended during the period of service. The employee has 180 days to “make-up” those requirements following release from duty.⁷⁴

A service member who is a student at a college, university, vocational, technical or trade school or secondary education institution is protected from being “unduly” penalized or forced to forfeit fees and expenses as a result of being ordered to federal active duty or mobilization.⁷⁵

Type Of Discharge Required For Eligibility



The MSRA is very liberal in its scope concerning which veterans fall within its protections. Specifically, it cloaks even those who served their country in a less than a stellar manner. Under the MSRA, a veteran need only avoid a dishonorable discharge—the worst type of discharge that can only be meted out by a general courts-martial. Veterans who are separated for misconduct under administrative proceedings and given an Other Than Honorable discharge, and even those kicked out with a Bad Conduct discharge after being convicted in a courts-martial, appear to be eligible for protection under MSRA. This appears to have been an oversight by the drafters and needs to be remedied in future legislation. As currently drafted, this portion of the MSRA is inconsistent with USERRA, which requires that veterans be separated with an Honorable or Under Honorable Conditions (General) characterization of service, for eligibility.⁷⁶

Enforcement.

A civil suit can be brought by a service member against an employer for violations of the MSRA. Cases brought against the State of Wyoming, as an employer, can be prosecuted in any district court in the state, while cases against private employers must be filed in the district court situated in the county where the employee works.⁷⁶ State district courts are vested with jurisdiction to order an employer to comply with the Act, award compensation for lost wages and benefits stemming from violations of the MSRA, and award liquidated damages for willful violations.⁷⁷ The statute also directs the district court to give preferential treatment to MSRA cases in terms of scheduling.⁷⁸

One other benefit of the Act is its provision for an award of litigation costs and attorney's fees. An award of attorney's fees is mandated for MSRA actions.⁷⁹ If the action is based on the anti-discrimination or reinstatement provisions, a prevailing service member may also be awarded a judgment for administrative or litigation costs incurred in connection with the action, in addition to attorney's fees.⁸⁰

Part Three: What Law To Use—State or Federal?

Most of the time, the best starting point will be the federal law—USERRA. When USERRA applies, it establishes the minimum protections for service members; most of the time the MSRA is simply mirroring or slightly supplementing the USERRA rights/benefits.⁸¹ USERRA also has a much more extensive case law history, making the scope and reach of its provisions a bit more clear and unambiguous than MSRA. In addition, USERRA reaches beyond the borders of Wyoming, whereas the MSRA does not. Any time the employment is outside of Wyoming, use USERRA.¹

There are times, however, when the MSRA does add significantly to the USERRA law, and also times when USERRA does not apply, making the MSRA the only applicable law.



The primary area where MSRA adds significantly to USERRA is when the State Of Wyoming, or a subdivision (including community colleges), is the employer. The MSRA provides added benefits for state, county, municipality and community college employees, including 15 days of paid military leave that is in addition to any other type of leave. Anytime a state, county, municipal or community college employee is involved, the MSRA should be the primary source of law.

As stated in the introduction, USERRA applies in all situations involving “service in the uniformed services.” One area that is not included under USERRA, however, is when National Guardsmen serve in a “State Active Duty” status. A “State Active Duty” status is a purely state status, no federal money, no federal status whatsoever. State Active Duty status is funded solely with state funds and therefore is used primarily only for state emergencies (flood, riots, blizzards, etc.). While this status is rarely invoked, when the Guard does serve in this capacity, the only area of law that protects its members concerning reemployment, rights and benefits, is the MSRA.

Military Legal Assistance & ESGR

Each military installation, including the National Guard, has a legal office. The legal offices all have licensed attorneys, and in the case of the Wyoming Guard all of the attorneys are typically licensed in the State of Wyoming. The military legal offices offer its military members legal assistance for matters covered under both USERRA and the MSRA. The scope of this assistance can vary from office to office. But always includes the ability to provide information and assist in the enforcement of USERRA/MSRA. Civilian practitioners should always consider contacting the local Judge Advocate General’s (JAG) office whenever a client has an issue in this area.

Another entity that is a tremendous resource in this area is the Employer Support of the Guard and Reserve—commonly referred to as “ESGR.” This is an organization run by volunteers who help service members and employers work through the challenges of military service and civilian employment. ESGR representatives typically are very familiar with the provisions of USERRA, and offer a “third party assistance” program and informal mediation services to facilitate resolving issues between the service member and employers. ESGR is often times the best first step.

Conclusion.

These statutory acts provide considerable protections for the employment rights of Wyoming service members. Unfortunately, there are many employers who are oblivious to these requirements. Because there is significant overlap between the MSRA and USERRA, an employer’s violation of one act likely constitutes a violation of both. The penalties for violating these rights are significant and attorneys can be instrumental in persuading offending employers to comply with the law. Knowledge of these protections



is key to an attorney's effective representation and the education of employers. Any time an attorney can assist a service member in this area, he or she can rightfully consider their service as a patriotic contribution to our military forces!



IV. SOLDIERS GROUP LIFE INSURANCE

1. Introduction. Servicemember's Group Life Insurance (SGLI) is often one of the largest portions of our estate (increasing to \$400,000 on April 1, 2001). It is important for all of us to become aware of how SGLI is distributed and how we should ensure that our SGLI is compatible with our estate distribution plan designated in our Wills/Trusts. Recently, the Wyoming legislature passed a Bill that reimburses soldiers \$16.25 of the \$26 for the full coverage of \$400,000. The soldier will be responsible for paying the insurance premiums during the year and will be reimbursed at the end of the year.

2. Overview of Form. The SGLI Form is SGLV-8286. It breaks down beneficiaries into two main categories: a beneficiary is either a "Principal" or a "Contingent." The "Principal" receives the money. If the "Principal" is not able to receive the money, then the "Contingent" receives the money. If more than one beneficiary is designated as a "Principal" or "Beneficiary," then the fraction each is to receive must be stated on the form.

3. Distribution. SGLI is a form of insurance and as such it will be distributed to whomever you designate as the beneficiary, notwithstanding anything you say in your Will. In other words, the SGLV-8286 RULES (as to SGLI)!

4. Divorce. Lets indulge in a hypothetical: a soldier and spouse divorce; they now despise each other and the soldier wants nothing more than for the ex-spouse to live in poverty (it's just a hypo). Lets even say the soldier is now remarried and changes his/her Will giving everything to the new spouse. If the ex-spouse, at the time of death, is still listed on the SGLV-8286 as the "Principal" receiving 100%, then to-bad-so-sad Charlie, the SGLI goes to the ex-spouse. As you can see, it is imperative that soldiers make sure that the SGLV-8286 is up-to-date, and that it accurately reflects how he/she wants the SGLI disbursed.

5. Children. Soldiers may designate their children as a beneficiary. A soldier can either designate children by name or by relationship. In other words the soldier can list the children's names (Curly, Mo, and Larry) or state "My Children." Usually, if you only have one child it is advisable to put "My Child(ren)." This will prevent any danger of after-born children from being excluded. If the soldier has children from different spouses, it is best to identify the children by linking them to that spouse. For instance, "My Children from my marriage to Yogi Bear." The definition of "children" in the SGLI statute excludes step-children and certain children born out of wedlock. If any such children are intended beneficiaries, they should be included by name. For example, "my children including my stepchild, Ima Clueded."

6. Minors. While a soldier may designate his/her children as beneficiaries, it is important to understand that SGLI cannot be distributed directly to a minor until that minor reaches the age of eighteen (18). This means that until the minor reaches the age of 18, someone else is going to be in charge of the money on behalf of the minor.



Because a minor cannot receive the money immediately, the discussion below we will look at the different options for distribution to minors:

a. Out-Right Gift. If a minor ends up being the beneficiary of the SGLI and there was no Custodian or Trustee designated on the SGLV-8286, then an adult will be required to petition a court and be appointed the guardian of the SGLI proceeds. The court determines who is best qualified to serve as the guardian.

b. Custodianship Under Gifts or Uniform Transfers to Minors Act. To avoid the requirement of court involvement, to avoid the delay of waiting on a will to be probated and thus enable the SGLI proceeds to be distributed without undue delay, a soldier may designate a custodian for each child under the UGMA/UTMA. The proper language to do this is the following: "(Name of custodian), as custodian for each of my children, pursuant to the UGMA/UTMA of the State of Wyoming, (with distribution to each minor when that minor reaches age of 18 (18 in Wyoming, 21 in Colorado)." Before doing this, it is advisable that the soldier contact the custodian to ask if the custodian is willing to act as such (although the soldier should not delay in designating a beneficiary). The disadvantage to this option is that the money must be distributed to the child at the age of 18 in Wyoming, regardless of the child's maturity.

c. Living Trust For Children. A Living Trust is a document that creates a trust while the soldier is alive. This is often referred to as an "Inter Vivos Trust." If a soldier already has an Inter Vivos Trust in existence, then it is advisable to name the Trustee as the beneficiary on behalf of the children. The appropriate language would be: "(Name of Trustee), my trustee, pursuant to a trust agreement dated (insert date)." The Wyoming National Guard JAG Office DOES NOT create Living Trusts for soldiers. This is something that would need to be obtained from a private attorney and is usually used when a soldier requires estate tax planning and/or desires to avoid probate.

d. Testamentary Trust For Children. Soldiers may establish a trust in his/her will that does not take effect until the property under the will actually funds the trust. Often, a Testamentary Trust is advisable when a soldier has minor children. The Wyoming National Guard JAG Office DOES offer the service of Testamentary Trusts. If a soldier's Will contains a Testamentary Trust for children, then the appropriate language for the children on SGLV-8286 would be: "My trustee to fund a trust established for the benefit of my child(ren) under my will."

7. As you can see from above, keeping the SGLV-8286 current and accurate is crucial. When minors are involved there can be many concerns and considerations for the soldier. Especially, when a soldier has children from different marriages and/or step-children. Moreover, it is important to make sure that your SGLV-8286 coincides with your Will and estate plan. When soldiers are filling out their SGLV-8286, they should know whether their Will contains a Testamentary Trust, or not; they should know whether they want to appoint a Custodian, or not. When married soldiers decide to split-up their SGLI by designating not only their spouse as a "Principal" but also their children as a "Principal" (as opposed to simply a "Contingent"), they need to know what consequences



accompany that type of decision. Education needs to occur. Soldiers are highly encouraged to seek JAG advice to decide whether a Custodianship, Testamentary Trustee or a Living Trust is best for his/her given situation. In fact, any time a soldier or the staff has a question in this area--contact the JAG Office. Lastly, soldiers should NOT delay in designating their desired beneficiaries for SGLI. If a soldier does not have time figure-out all the legalities, they should complete the form as they presently desire, then make an appointment with JAG. If a change needs to occur, then the soldier can always execute a new form. It is better to insure that soldiers have an SGLV-8286 on file that at least reflects their present desire, than to have no SGLV-8286 at all.



V. GENERAL TAX INFORMATION

General Tax Information for Taxpayers – 2005 Quick Reference

***General Information:** *This handout is intended as general information only and not a substitute for professional advice. Each situation is fact specific. If you have questions, seek a professional.*

***General Tax Issues:**

--Lower income tax brackets: 2005 - 10%; 15%; 25%; 28%; 33%; & 35%

--Expanded tax brackets: For single filers, the income threshold in the 10% tax bracket increases to \$7,300 and for married filing jointly to \$14,600.

-Higher Standard Deductions: Single or married filing separately - \$5,000; head of household - \$7,300; married filing jointly or qualifying widow(er) - \$10,000. Different amounts apply if the taxpayer or spouse is blind or is age 65 or older, or if the taxpayer can be claimed as a dependent on someone else's return. Taxpayers may receive a larger deduction if they itemize deductions. Examples of itemized deductions include: state and local income taxes; real estate taxes; mortgage interest; charitable donations; and medical expenses exceeding 7.5% of adjusted gross income. For more information see your local tax center or <http://www.irs.gov/>.

-- Higher Exemption Amount: The personal exemption amount for 2005 is \$3,200 – a \$100.00 increase over last year. An additional amount may be available if you provided free housing to victims displaced by Hurricane Katrina.

--Filing dates: 17 April 2006, unless overseas – 15 June 2006, unless in a combat zone (see below).

--Earned Income Tax Credit (EITC): Earned income for EITC no longer includes **non**-taxable income (such as military housing allowances and combat excluded pay). However, for tax years 2004, 2005, and 2006 taxpayers can elect to include income earned in a combat zone (and thus normally excluded for federal tax purposes) in their income for purposes of the earned income tax credit. The wages earned in a combat zone will be separately stated on the W-2 in box 14, Designation Q. This election will enable many lower ranking service members

The military is one of the strongest partners in the IRS Volunteer Income Tax Assistance (VITA) Program. Most installations have a tax assistance center staffed with trained military members or volunteers and will provide **free tax assistance**, to include electronic filing, **to any person holding a valid military identification card**. FE Warren AFB provides this service typically every year from mid January to the end of tax season, hours usually (0800-1200 & 1300-1600, M-F). Call (307) 773-2256 for the tax center number. If you are not eligible for assistance at a military tax center other options may be available to you through the IRS free-file program. Information on this program is available at www.irs.gov.

If you electronically file your return and elect to have your refund directly deposited into your bank account, you should receive your refund



to qualify for the earned income tax credit. Any military taxpayer with at least one qualifying child, who expects their 2005 AGI will be less than \$31,030 (\$33,030 if filing jointly), or with two or more qualifying children, expects their 2005 AGI will be less than \$35,263 (\$37,263 if filing jointly), or is between 25 and 65 with no children but an AGI less than \$11,750 (\$13,750 if filing jointly) may be eligible for the EITC on their 2005 return. EITC is a refundable credit and could result in a refund of as much as \$4400, even if there was no tax liability. If you receive the EITC credit this year and expect your AGI to be similar in 2006, you may qualify for an advance payment of EIC throughout the 2006 tax year. If eligible for the advance payment, the military taxpayer simply has to complete a [W-5](#) (PDF) and file that with Finance. *Also see [Earned Income Credit Eligibility](#).*

--Child Tax Credit: The Child Tax Credit is \$1,000 per qualifying child for 2005. To qualify, a child must be under age 17, be a citizen or resident of the US, be claimed as the taxpayer's dependent, and be the taxpayer's (a) child, stepchild, adopted child, or a descendant of any of them; (b) sibling, stepsibling, or a descendant of any of them, whom the taxpayer cared for as his own, or (c) eligible foster child. The full credit is available in 2005 to single parents with modified adjusted gross income (MAGI) of \$75,000 or less or to couples that file jointly with MAGI of \$110,000 or less. The credit is phased out (reduced) for taxpayers whose MAGI exceeds the amounts listed.

-- Child and Dependent Care Credit: The credit for child and dependent care expenses can be as much as 35% of your qualified expenses. The limit on the amount of qualifying expenses is \$3,000 for one qualifying individual and \$6,000 for two or more qualifying individuals. These maximums are reduced by any amount excluded from gross income under an employer's qualified dependent care assistance program. This credit is phased out (reduced) if your adjusted gross income is over a certain amount. For more information see [Tax Topic 602, Child and Dependent Care Expenses](#) or [Publication 503, Child and Dependent Care Expenses](#).

Capital Gains and Qualified Dividends: The top tax rate for net long term capital gain on sales of capital assets and for most qualified dividends is generally 5% for individuals in the 10 and 15% brackets and 15% for all others. Qualified

within 7-10 days.

Items you need to bring to the military tax center or other tax preparer:

- Must bring photo identification
- Social Security cards for you, your spouse, and dependents
- Birth dates for dependents
- Wage and earning statement(s) Form W-2, W-2G, 1099-R, from all employers
- Interest and dividend statements from banks (Forms 1099)
- A copy of last years federal and state tax returns, if available
- Bank Routing Numbers and Account Numbers for Direct Deposit
- Other relevant information about income and expenses

- - Payments for Day Care
- - Day Care providers identifying numbers
- - Educational expenses
- - Medical expenses
- - Home mortgage interest information
- - Charitable Contributions
- To file taxes



dividends should be shown in box 1b of the Forms 1099-DIV or similar statements you receive. If you have qualified dividends, you must figure your tax by completing either Schedule D (Form 1040) or the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040 or the instructions for Form 1040A. There is no change to the maximum tax rates that apply to collectibles gain, gain on qualified small business stock and unrecaptured section 1250 gain.

electronically on a married filing joint tax return, both spouses must be present to sign the required form or have a valid power of attorney.

Standard Mileage Rates for 2005:

☐ Business miles – The standard mileage rate for the cost of operating your car for business miles is 40.5 cents per mile for travel between 1 January 2005 and 31 August 2005 and 48.5 cents per mile for travel between 1 September 2005 and 31 December 2005. . Publication 463, Travel, Entertainment, Gift, and Car Expenses, has more information about car expenses and use of the standard mileage rate.

☐ Medical reasons – The standard mileage rate allowed for use of your car for medical reasons is 14 cents per mile for travel between 1 January 2005 and 31 August 2005 and 22 cents a mile for travel between 1 September 2005 and 31 December 2005. Publication 502, Medical and Dental Expenses, has information on deductible mileage related to medical expenses.

☐ Moving – The standard mileage rate allowed for determining moving expenses is 14 cents per mile for travel between 1 January 2005 and 31 August 2005 and 22 cents a mile for travel between 1 September 2005 and 31 December 2005. Publication 521, Moving Expenses has information on deductible mileage related to a move.

☐ Charitable miles – The standard mileage rate allowed for use of your car for qualified charitable reasons is 14 cents per mile. You may be entitled to a higher rate for charitable miles driven in support of Hurricane Katrina Relief. Publication 526, Charitable Contributions, has information on deductible mileage related to charitable contributions.

-- **IRS Tax Tips 2006** - see a list of IRS news releases & fact sheets.

****Education**

--Use to save money for



--Coverdell Education Savings Accounts (ESA) Can Make Education Costs Less Taxing;

Annual contribution limit \$2,000 per child. No deduction for contributor, but money grows tax-deferred and tax-free if used for qualified education expenses

Contribution phase-out ranges (adjusted gross income):
Single \$95,000 - \$110,000; Married \$190,000 - \$220,000
Elementary & secondary school expenses qualify.
Contributions may be made up until the original due date of the tax return (normally April 15 of the next year).

estimated college costs
--Consider Coverdell ESAs for qualified elementary & high school education expenses

--Contributions may be made to Coverdell ESAs and Section 529 Plans in

the same year for the same beneficiary.

--IRS Pub 970, [Tax Benefits for Higher Education](#)

--College Saving Plans or Section 529 Plans earnings are tax exempt when used to pay for qualified higher education expenses (e.g., tuition, room and board, books and fees, and any other expenses that students are required to pay to attend any accredited college or university).

-- **Hope or Lifetime Learning Credit:** Eligible students may be eligible for a Hope credit of up to \$1,500 or a Lifetime Learning Credit of up to \$2,000 in 2005. The Hope credit is available per qualified student (i.e. the credit could exceed \$1,500 on a tax return provided more than one student was qualified) however; the Lifetime Learning credit is limited to a maximum of \$2,000 per tax return. Both of these credits phase out at adjusted gross income levels between \$87,000 and \$107,000 for married taxpayers filing jointly and between \$43,000 and \$53,000 for all others.

-- **Tuition and Fees Deduction:** Up to \$4,000 in qualified expenses can be deducted from income regardless of whether you itemize deductions. Qualifying expenses are tuition and fees required to be paid for enrollment or attendance at an eligible postsecondary institution. You may not deduct expenses for personal, living or family expenses (including room and board), insurance or transportation. The exact amount of the deduction depends on the qualified tuition and related expenses you pay for yourself, your spouse, or a dependent you can claim an exemption and your adjusted gross income for an adjustment to income for up to the \$4,000 maximum.



****Combat Zone Tax Benefits**

Combat zone tax benefits: military members serving in a combat zone may exclude most military pay from income for income tax purposes and may extend the period for filing and paying income tax in addition to other benefits. In some instances these benefits are available to members serving outside the combat zone.

The Military Family Tax Relief Act of 2003 provided the extension for filing and paying federal taxes to members serving in contingency operations.

Combat zones in 2005:

Afghanistan area - Executive Order No. [13239](#) designated Afghanistan (and airspace above) beginning September 19, 2001.

Kosovo area - Executive Order (EO) No. [13119](#) and Public Law [106-21](#) designated these locations (including air space above) as a combat zone and a qualified hazardous duty area (QHDA) beginning March 24, 1999: Federal Republic of Yugoslavia (Serbia/Montenegro); Albania; The Adriatic Sea; & The Ionian Sea—north of the 39th parallel (including all of airspace in connection with Kosovo operation.) Also see Public Law [104-117](#) Effective 21 November 1995, QHDA: Bosnia and Herzegovina, Croatia, or Macedonia so long as service members are entitled to receive imminent danger/hostile fire pay under 37 U.S.C. § 310 for service in that location.

Persian Gulf area – EO No. 12744 designated these locations (and airspace above) as a combat zone beginning January 17, 1991: The Persian Gulf; The Red Sea; The Gulf of Oman; The part of the Arabian Sea that is north of 10 degrees north latitude and west of 68 degrees east longitude; The Gulf of Aden; and The total land areas of **Iraq, Kuwait, Saudi Arabia**, Oman, Bahrain, Qatar, and the United Arab

Tax forgiveness is available for members whose death occurs in a combat zone or as a result of wounds incurred in a combat zone. For more information on this topic see [Publication 3, Armed Forces Tax Guide](#).

For more information see the IRS website at [Questions and Answers on combat zone tax benefits](#).

****Retirement**

--**Thrift Savings Plan (TSP)** /401(k) contribution limit: \$14,000 in 2005.

--**IRA** contribution limit **\$4,000** in 2005. Special "catch-up" provision for savers 50 and over to invest up to \$4,500. IRS Pub 590, [Individual Retirement Arrangements](#) has more information on this issue. Low- and moderate-income

--Contributions to Military [TSP](#) are not taxed in year contributed. They lower your taxable income in contribution year.
--Use [DFAS Employee/Member Self-Service](#) site to enroll in



taxpayers who contribute to a traditional IRA may qualify for TSP. an adjustment to income for up to \$4,000 for these contributions depending on their earned income and their adjusted gross income. Generally single taxpayers will qualify for a partial or full adjustment if their adjusted gross income is less than \$60,000. Married taxpayers filing jointly will qualify for a full or partial adjustment if their adjusted gross income is less than \$80,000.

--**Roth IRA:** An individual can generally contribute up to \$4,000 a year to a Roth IRA. If an individual contributes to both a traditional and Roth IRA, the combined contributions are limited to \$4,000 a year. Contributions to Roth IRAs are not deductible however; if certain qualifications are met the withdrawals from a Roth IRA are tax-free.

-- **Retirement Savings Contribution Credit:** In addition to the adjustment to income available to some taxpayers, a credit may be available for contributions to IRAs, traditional or Roth, 401k, or TSP retirement savings accounts. The maximum credit available for these contributions is \$2,000 and is phased out (reduced) based on the adjusted gross income. For single taxpayers the credit is not available if the adjusted gross income exceeds \$25,000; for head or household the credit is not available if the adjusted gross income exceeds \$37,500; and for married filing jointly the credit is not available if the adjusted gross income exceeds \$50,000.

****Estate**

--The 2001 Tax Act gradually eliminates the estate tax by increasing the amount that is exempt from tax over several years, reducing the top rate over several years, and finally repealing the estate tax for individuals dying in **2010**. Under current law: no estate tax on the first \$2,000,000 of transfers at death for individuals dying in 2005. The gift tax exemption remained at \$1,000,000. The 2001 Tax Act increases the estate tax exemption in later years, rising to \$3.5 million in 2009, before full repeal in 2010 **only**. The gift tax exemption remains at \$1,000,000, and the gift tax is not repealed in 2010. Unless Congress changes the law, the estate and gift tax system will return in 2011, with the exemption back to \$1 million for both purposes.

--In **2010**, no estate tax; top gift tax rate: 35%. (Under current law, the top estate and gift tax rates revert to 55% in **2011**.)

--Review your will and related estate plan documents to ensure your assets pass as desired.

--(Re-) Evaluate life insurance needs

--Individuals who may have an estate over the increasing exemption amount (or the \$1,000,000 amount that will apply for 2011 after estate tax is restored one year after it is repealed) should consult an experienced estate planner.



-- [2006 Tax Information for Trusts and Estates](#)

--Keep records on cost basis of assets

--[Legal Services](#) – Estate Planning information Center

****New Military Tax Benefits**

For more information on the provision of this act see [Highlights: Working Families Tax Relief Act of 2004](#).

--**Military Family Tax Relief Act** – This Act was signed into law by President Bush on November 11, 2003 and contains several tax benefits for military members.

-- **Base Realignment:** A military base realignment and closure benefit generally is nontaxable if paid to you after November 10, 2003.

-- **Sale of a home:** If you have been a member of the uniformed services, you now may be able to exclude from income a gain from selling your main home, even if you did not live in it for the required 2 years during the 5-year period ending on the date of sale. You can choose to have the 5-year period for ownership and use suspended during any period you or your spouse serves on qualified official extended duty more than 50 miles from your residence. More information on selling your home can be found in IRS Pub 523, [Selling Your Home](#).

-- **Armed Forces Reservists:** Beginning in 2003, if you are a member of a reserve component of the Armed Forces, you may be able to deduct some of your reserve-related travel costs as an adjustment to gross income rather than as an itemized deduction. More information can be found in [Publication 463, Travel, Entertainment, Gift and Car Expenses](#), at “Armed Forces Reservists Traveling More than 100 Miles from Home” in Chapter 6.

-- **Contingency Operations** – This Act extended the combat zone **filing extensions (not combat tax exclusion)** to members of the Armed Forces serving in contingency operations. Members serving in combat zones, areas in direct support of a combat zone or in contingency operations are entitled to an extension of time for filing and paying their federal income tax equal to 180 days after they depart the combat zone or contingency operation plus the number of days served in the combat zone or contingency operation area between January 1 and April 15.

-- **Qualified tuition programs/Coverdell Education Savings**



Account: The 10% tax on a qualified tuition program or Coverdell ESA distribution does not apply to attendees of the five military academies, to the extent the distribution does not exceed the costs of advanced education at the academy [Publication 970, Tax Benefits for Higher Education](#), has more information on this issue.

****Working Families Tax Relief Act of 2004**

--Working Families Tax Relief Act of 2004 – This Act was signed into law by President Bush on October 5, 2004 and contains two tax benefits specifically for military members and several others that will benefit military taxpayers.

For more information on the provision of this act see [Highlights: Working Families Tax Relief Act of 2004](#).

-- Child Tax Credit - For tax years beginning in 2004 through 2010, combat pay excluded under Code Section 112 is treated as earned income for purposes of the refundable child credit. This will enable many military members to qualify for the refundable portion of the child credit. This Act also maintains the child tax credit at \$1,000 per qualifying child through tax year 2010.

-- Earned Income Tax Credit – For tax years 2004 and 2005, the Act allows any military taxpayer to elect to treat combat pay that is otherwise excluded from gross income under Code Section 112 as earned income for purposes of the earned income tax credit. **NOTE:** This election has been extended through tax year 2006 by the Gulf Zone Opportunity Act of 2005.

-- Marriage Penalty Relief – The basic standard deduction amount for married joint filers is increased to double the standard deduction for single filers through tax year 2008. Additionally, for tax years 2005 through 2007, the end point of the 15% tax bracket for joint returns is increased to twice the end point of the 15% tax bracket for single returns.

-- Above the line educators' Deduction – Under pre-Act law, the above the line deduction of up to \$250.00 for expenses incurred by eligible educators was scheduled to expire after tax year 2003. The Working Families Tax Relief Act of 2004 extended this deduction for tax years 2004 and 2005.

-- Hybrid Car Credit – Under pre-Act law, the tax adjustment available for the cost of a qualified electric vehicle placed in



service before 2007 was scheduled to be reduced to \$1,500 for 2004; \$1,000 for 2005, and \$500 for 2006. The Working Families Tax Relief Act of 2004 allows the full adjustment (\$2,000) for qualified vehicles placed in service in 2004 and 2005. **NOTE:** The Energy Policy Act of 2005 replaced the adjustment to income previously available for hybrid cars with a tax credit of up to \$3,100 for the first 60,000 hybrid vehicles manufactured and sold.

****American Jobs Creation Act of 2004**

This Act was signed into law by President Bush on October 22, 2004 and contains a few provisions that affect individual taxpayers.

-- Adjustments to Income – For a judgment or settlement occurring after Oct. 22, 2004, the Act allows an above-the-line deduction for attorney’s fees and court costs incurred in connection with an unlawful discrimination claim. This adjustment is available regardless of whether an individual taxpayer itemizes deductions.

-- Deduction for State and Local Sales Tax - For tax year 2004 and 2005, individuals may elect to deduct as an itemized deduction either the state and local income tax paid during the year or the state and local sales tax paid during the year. Individuals may use actual sales tax paid or use tables prescribed by the IRS. This change will primarily appeal to taxpayers who itemize deductions in states that impose a sales tax but not an income tax, such as Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. Taxpayers in states with a state income tax should compute their itemized deductions both ways to determine whether it is more beneficial to deduct state income tax or state sales tax on Schedule A.

-- Charitable Contributions – The 2004 Jobs Act provides that, in the case of a contribution of a “qualified vehicle,” after 1 January 2005 generally an auto, boat, or airplane, with a claimed value which exceeds \$500, no deduction will be allowed unless the taxpayer (1) substantiates the contribution by a contemporaneous written acknowledgement from the donee organization containing the required information and certifications and (2) includes the acknowledgement with the tax return on which the deduction is claimed. Additionally, if



the organization sells the vehicle without any significant intervening use or material improvement, the amount of the deduction available to the taxpayer will be limited to the gross sales proceeds. Since charities often sell vehicles at auctions or in bulk sales where the prices are below blue book value, this provision may greatly reduce donor deductions for gifts of vehicles. Since the amount of the deduction will be uncertain until the charity sells the vehicle and reports the gross sales price to the taxpayer, it may not be possible for a taxpayer to claim a charitable deduction for a vehicle donated near the end of the tax year on a return filed by the original due date. If the charity sells the donated vehicle after a significant intervening use (i.e. the charity uses the vehicle to further the charities purpose), the donor's deduction is not limited to the sale proceeds and the donor can deduct the fair market value of the vehicle as a charitable contribution.

****General Information: This handout is intended as general information only and not a substitute for professional advice. Each situation is fact specific. If you have questions, seek a professional.***



APPENDIX A

Dear Creditor:

The President of the United States has exercised his authority under 10 U.S.C. § 12302 to order the _____(Unit), Wyoming National guard, to active duty. I am one of the soldiers being called into active duty by the President. Enclosed is a copy of my orders. I received my orders, calling me to service, on _____.

It is my understanding that as a result of being called into active duty I am entitled to certain protections under the Servicemember's Civil Relief Act (Public Law 108-189, dated 19 December 2003) (Replaced the soldiers and Sailors Civil Relief Act).

Specifically, pursuant to Section 207 of the SCRA, I am entitled to a reduction of interest rates on all pre-service debts to a rate of 6% per annum. Excess interest over 6% must be forgiven, not simply deferred or accrued. I am also entitled to having my payments recalculated at the 6% rate, and entitled to make payments using the 6% rate.

With this letter, I am formally requesting that you audit my account and adjust my interest rate to a rate of 6% beginning on the date I was called to service, which is _____, and continue this adjustment until my active duty is over. In addition, please provide me with a corrected billing statement reflecting the change to 6%.

If you need information on this request, please contact me at _____, or the Staff Judge Advocate Office at the Wyoming Guard at (307) 772-5254.

Thank you for your time and assistance.

Sincerely,

(Print Name)

(Signature)

(Date)

(Account Information)

APPENDIX B

Auto Lease Termination Letter Example

(Address of Finance/Lease Company)

(Date) _____

Dear _____,

I am _____ (name) (SSN: ____ - ____ - ____). My account number is # _____. I am a Wyoming Army National Guardsman and I have an automobile lease with your company. I have been mobilized under 10 U.S.C. § 12302. I enter federal active duty military service (as defined by Title 10 section 101(d)(1)) on _____ (dated). Attached are a copy of my orders for _____ months of active duty. **(Remember to attach orders).**

Given that I will be out of the country serving on active duty military orders and thus will not be physically able to use the vehicle, I am giving you notice of termination of my automobile lease under the Servicemembers Civil Service Relief Act.

Specifically, I am invoking my right to terminate the automobile lease under Section 305 of Public Law 108-189 [H.R. 100] dated December 19, 2003. On _____ 2004, I spoke with _____ (name) on the telephone at _____ (phone number) concerning this matter. _____ (name) confirmed that I could terminate my lease without penalty under the SCRA by simply _____ (mailing/faxing) this letter with a copy of my orders to the _____ (address/number) above. She also told me that _____ (state where they instructed you to drop off the vehicle or that they would send a representative to your home/ business location to pick-up the vehicle). (Discuss when you will deliver the vehicle or when the vehicle can be picked-up and where). **(Note: You only have 15 days from this notice to deliver the vehicle).**

The mileage of my vehicle will be approximately _____ miles. The lease gives me a maximum amount of miles of _____. I am, therefore, _____ (under/over) my mileage limit. **(Note: if over—there may be very expensive mileage costs, compare it to the cost of holding on to the lease).** In addition, the lease term was a _____ months. **(Discuss here the pro-rated amount of mileage you were allowed compared to the amount you actually drove, and discuss whether you owe money or not for mileage).**

I want to personally thank you and your company. _____ has served me well during the lease of the vehicle, and now that I am off to serve my country, I appreciate the support that _____ is providing me in making the difficult transition easier. Again, thank you. .

Sincerely,

(Note To Soldier/Dependant: Call JAG OFFICE FOR ASSISTANCE---(307) 772-5254).

APPENDIX C

_____ (Address)

_____ (Date)

Dear _____,

I am providing you with notice of termination for my lease of _____ (address) under the provisions of the Servicemembers Civil Relief Act (Public Law 108-189, December 19, 2003).

I am being mobilized for active duty as part of the Wyoming Army National Guard, under 10 U.S.C. (12302/12304). Section 305 of the new Servicemembers Civil Relief Act permits individuals such as myself, who are mobilizing for active duty for a period of 90 or more days, to terminate the lease 30 days after notice and after the next payment is due. I am paying for my rent due on _____. I am therefore requesting that you terminate my lease effective _____.

Under the Servicemembers Civil Relief Act, I am requesting a full return of my deposit, minus any damage that may exist. I will clean the apartment and leave it in good condition, however, and do not anticipate any damages. If you do decide to retain some of my deposit, please send an accounting of the amount you retain, and the reasons for retaining, to: the Office Of The Staff Judge Advocate, Legal Assistance Division, Wyoming Army National Guard, 5500 Bishop Blvd., Cheyenne, WY 82009. The Office Of The Staff Judge Advocate may be reached at (307) 772-5254.

As for returning any deposit money to me, please send it to _____.

I want to thank you very much for your support in this matter. Preparing to deploy overseas for a very extended period of time has been a very cumbersome and difficult process. It will only get tougher when it is actually time to leave friends and family. I will appreciate anything you can do to make it easier.

Attached you will find a copy of my military mobilization orders. You may reach me at _____. Thank you.

Sincerely,

APPENDIX D

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

▶ Type or print. ▶ See the separate instructions.

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address	Social security number(s) _____ _____ _____	Employer identification number _____ _____
	Daytime telephone number (____) _____	Plan number (if applicable) _____

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific uses not recorded on CAF.** ☐ ▶

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶ _____

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a** If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
- b** If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- ▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

Signature	Date	Title (if applicable)
Print Name	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	Print name of taxpayer from line 1 if other than individual
Signature	Date	Title (if applicable)
Print Name	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a–h)	Jurisdiction (state) or identification	Signature	Date

Instructions for Form 2848

(Rev. March 2004)



Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

What's New

Revocation of an existing power of attorney. The instructions have been revised to allow representatives to use the same procedures as taxpayers for revoking an existing power of attorney. See **Revocation of Power of Attorney/Withdrawal of Representative** on page 2.

Authorization to file Form 2848 electronically. Your representative may be able to file Form 2848 with the IRS electronically. PIN number boxes have been added to the taxpayer's signature section. Entering a PIN number will give your representative authority to file Form 2848 electronically using the PIN number as the electronic signature. You can use any five digits other than all zeros as a PIN number. You may use the same PIN number that you used on other filings with the IRS. See **Where To File** below if completing Form 2848 only for this purpose.

Use of Form 2848 is limited to appointing a representative. If the representative you appoint is not qualified to sign Part II of this form, Form 2848 will not be honored and will be returned to you. As of March 2004, the IRS will no longer treat such invalid forms as authority for the person you named to receive your tax information.

Purpose of Form

Use Form 2848 to authorize an individual to represent you before the IRS. The individual you authorize must be a person eligible to practice before the IRS. The eligible individuals are listed in **Part II, Declaration of Representative**, items a-h. You may authorize a student who works in a Qualified Low Income Taxpayer Clinic (QLITC) or Student Tax Clinic Program (STCP) to represent you under a special order issued by the Office of

Professional Responsibility. See page 3. Your authorization of a qualifying representative will also allow that individual to receive and inspect your confidential tax information. See the instructions for line 7 on page 4.

Use **Form 8821, Tax Information Authorization**, if you want to authorize an individual or organization to receive or inspect your confidential tax return information, but do not want to authorize the individual or organization to represent you before the IRS.

Use **Form 56, Notice Concerning Fiduciary Relationship**, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative. If a fiduciary wishes to authorize an individual to represent or perform certain acts on behalf of the entity, then a power of attorney must be filed and signed by the fiduciary who is acting in the position of the taxpayer.

Where To File

Generally, mail or fax Form 2848 directly to the IRS. See the **Where To File Chart** below. Exceptions are listed below.

- If Form 2848 is for a specific use, mail or fax it to the office handling the specific matter. For more information on specific use, see the instructions for line 4 on page 3.
- If you complete Form 2848 only for the purpose of electronic signature authorization, **do not** file Form 2848 with the IRS. Instead, give it to your representative, who will retain the document.

Authority Granted

This power of attorney authorizes the representative to perform any and all acts you can perform, such as signing consents extending the time to assess tax, recording the interview, or executing waivers agreeing to a tax adjustment.

Where To File Chart

IF you live in...	THEN use this address...	Fax number*
Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, or West Virginia	Internal Revenue Service Memphis Accounts Management Center 5333 Getwell Road Stop 8423 Memphis, TN 38118	901-546-4115
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, or Wyoming	Internal Revenue Service Ogden Accounts Management Center 1973 N. Rulon White Blvd. Mail Stop 6737 Ogden, UT 84404	801-620-4249
All APO and FPO addresses, American Samoa, nonpermanent residents of Guam or the Virgin Islands**, Puerto Rico (or if excluding income under Internal Revenue Code section 933), a foreign country: U.S. citizens and those filing Form 2555, 2555-EZ, or 4563.	Internal Revenue Service Philadelphia Accounts Management Center 11601 Roosevelt Blvd. DPSW 312 Philadelphia, PA 19255	215-516-1017

* These numbers may change without notice.

**Permanent residents of Guam should use Department of Taxation, Government of Guam, P.O. Box 23607, GMF, GU 96921; permanent residents of the Virgin Islands should use: V.I. Bureau of Internal Revenue, 9601 Estate Thomas Charlotte Amaille, St. Thomas, V.I. 00802.

Also, you may authorize your representative to substitute another representative or delegate authority to another representative by adding this authority in the space provided on line 5. However, authorizing someone as your power of attorney does not relieve you of your tax obligations.

The power to sign tax returns can be granted only in limited situations. See the instructions for line 5 on page 3.

Unenrolled Return Preparer

An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, or enrolled actuary who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

An unenrolled return preparer is permitted to represent you only before customer service representatives, revenue agents, and examination officers, with respect to an examination regarding the return he or she prepared.

An unenrolled return preparer **cannot**:

- Represent a taxpayer before other offices of the IRS, such as Collection or Appeals. This includes the Automated Collection System (ACS) unit.
- Execute closing agreements.
- Extend the statutory period for tax assessments or collection of tax.
- Execute waivers.
- Execute claims for refund.
- Receive refund checks.

For more information, see Rev. Proc. 81-38, printed as **Pub. 470**, Limited Practice Without Enrollment.

If the unenrolled return preparer does not meet the requirements for limited representation, you may file Form 8821, which will authorize the unenrolled return preparer to inspect and/or receive your taxpayer information, but will not authorize the unenrolled return preparer to represent you. See Form 8821.

Revocation of Power of Attorney/ Withdrawal of Representative

If you want to revoke an existing power of attorney and do not want to name a new representative, or if a representative wants to withdraw from representation, send a copy of the previously executed power of attorney to the IRS, using the **Where To File Chart** on page 1. The copy of the power of attorney must have a current signature of the taxpayer if the taxpayer is revoking, or the representative if the representative is withdrawing, under the original signature on line 9. Write "REVOKE" across the top of Form 2848. If you do not have a copy of the power of attorney you want to revoke or withdraw, send a statement to the IRS. The statement of revocation or withdrawal must indicate that the authority of the power of attorney is revoked, list the tax matters, and must be signed and dated by the taxpayer or representative. If the taxpayer is revoking, list the name and address of each recognized representative whose authority is revoked. If the representative is withdrawing, list the name, TIN, and address (if known) of the taxpayer.

To revoke a specific use power of attorney, send the power of attorney or statement of revocation/withdrawal to the IRS office handling your case, using the above instructions.

Substitute Form 2848

If you want to prepare and use a substitute Form 2848, see **Pub. 1167**, General Rules and Specifications for Substitute Forms and Schedules. If your substitute Form 2848 is approved, the form approval number must be printed in the lower left margin of each substitute Form 2848 you file with the IRS.

Additional Information

Additional information concerning practice before the IRS may be found in:

- **Pub. 216**, Conference and Practice Requirements and
- **Treasury Department Circular No. 230**.

For general information about taxpayer rights, see **Pub. 1**, Your Rights as a Taxpayer.

Specific Instructions

Part I. Power of Attorney

Line 1. Taxpayer Information

Individuals. Enter your name, social security number (SSN), individual taxpayer identification number (ITIN), and/or employer identification number (EIN), if applicable, and your street address or post office box. **Do not** use your representative's address or post office box for your own. If a joint return is, or will be, filed and you and your spouse are designating the same representative(s), also enter your spouse's name and SSN or ITIN, and your spouse's address if different from yours.

Corporations, partnerships, or associations. Enter the name, EIN, and business address. If this form is being prepared for corporations filing a consolidated tax return (Form 1120), do not attach a list of subsidiaries to this form. Only the parent corporation information is required on line 1. Also, for line 3 only list Form 1120 in the Tax Form Number column. A subsidiary must file its own Form 2848 for returns that must be filed separately from the consolidated return, such as **Form 720**, Quarterly Federal Excise Tax Return, and **Form 941**, Employer's Quarterly Federal Tax Return.

Employee plan. Enter the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the sponsor.

Trust. Enter the name, title, and address of the trustee, and the name and EIN of the trust.

Estate. Enter the name, title, and address of the decedent's executor/personal representative, and the name and identification number of the estate. The identification number for an estate includes both the EIN, if the estate has one, and the decedent's SSN or ITIN.

Line 2. Representative(s)

Enter your representative's full name. Only individuals may be named as representatives. Use the identical full name on all submissions and correspondence. If you want to name more than three representatives, indicate so on this line and attach an additional Form(s) 2848.

Enter the nine-digit CAF number for each representative. If a CAF number has not been assigned, enter "None," and the IRS will issue one directly to your representative. The CAF number is a unique nine-digit identification number (not the SSN, EIN, PTIN, or enrollment card number) that the IRS assigns to representatives. The CAF number is not an indication of authority to practice. The representative should use the assigned CAF number on all future powers of attorney. CAF numbers will not be assigned for employee plans and exempt organizations application requests.

Check the appropriate box to indicate if either the address, telephone number, or fax number is new since a CAF number was assigned.

If the representative is a former employee of the Federal Government, he or she must be aware of the postemployment restrictions contained in 18 U.S.C. 207 and in Treasury Department Circular No. 230, section 10.25. Criminal penalties are provided for violation of the statutory

restrictions, and the Office of Professional Responsibility is authorized to take disciplinary action against the practitioner.

Students in QLITCs and the STCP. If the lead attorney or CPA will be listed as a representative, list the lead attorney or CPA first on line 2, then the student on the next line. Also see page 4 for how to complete Part II.

Line 3. Tax Matters

Enter the type of tax, the tax form number, and the year(s) or period(s) in order for the power of attorney to be valid. For example, you may list "Income tax, Form 1040" for calendar year "2003" and "Excise tax, Form 720" for the "1st, 2nd, 3rd, and 4th quarters of 2003." For multiple years, you may list "2001 through (thru or a dash (-)) 2003" for an income tax return; for quarterly returns, list "1st, 2nd, 3rd, and 4th quarters of 2001 through 2002" (or 2nd 2002 – 3rd 2003). For fiscal years, enter the ending year and month, using the YYYYMM format. Do not use a general reference such as "All years," "All periods," or "All taxes." Any power of attorney with a general reference will be returned. Representation can only be granted for the years or periods listed on line 3.

You may list any tax years or periods that have already ended as of the date you sign the power of attorney. However, you may include on a power of attorney only future tax periods that end no later than 3 years after the date the power of attorney is received by the IRS. The 3 future periods are determined starting after December 31 of the year the power of attorney is received by the IRS. You must enter the type of tax, the tax form number, and the future year(s) or period(s). If the matter relates to estate tax, enter the date of the decedent's death instead of the year or period.

If the type of tax, tax form number, or years or periods does not apply to the matter (i.e., representation for a penalty or filing a ruling request or determination), specifically describe the matter to which the power of attorney pertains and enter "Not Applicable" in the appropriate column(s).

Civil penalty representation (including the trust fund recovery penalty). Forms 2848 for civil penalty issues will now be recorded on the CAF. Generally, this applies to non-return related civil penalties, such as the penalty for not meeting the due diligence requirement for return preparers of earned income credit and the penalty for failure to file information returns. For example, Joann prepares Form 2848 authorizing Margaret to represent her before the IRS regarding the penalty for failure to file information returns. Margaret will have authority to represent Joann for all non-return related civil penalties. However, Margaret will not be able to represent Joann for any other tax matters, such as Form 941 or Form 1040 issues unless authorized on Form 2848.

Representation for return related civil penalties, such as the accuracy-related penalty or the failure to file penalty is included when representation is authorized for the related tax return. For example, Diana prepares Form 2848 authorizing Susan to represent Diana for an examination of her 2001 and 2002 Form 1040. If the accuracy-related penalty is proposed by the IRS during the examination, Susan would be authorized to discuss the penalty with the IRS.

How to complete line 3. On line 3, enter "Civil penalties" in the type of tax column and the year(s) to which the penalty applies in the year(s) or period(s) column. Enter "Not Applicable" in the tax form number column. You do not have to enter the specific penalty.

Line 4. Specific Uses Not Recorded on CAF

Generally, the IRS records powers of attorney on the CAF system. However, a power of attorney will not be recorded

on the CAF if it does not relate to a specific tax period (except for civil penalties) or if it is for a specific issue. Examples of specific issues include but are not limited to the following:

- Requests for a private letter ruling or technical advice,
- Applications for an EIN,
- Claims filed on Form 843, Claim for Refund and Request for Abatement,
- Corporate dissolutions, and
- Requests to change accounting methods or periods.

Check the box on line 4 if the power of attorney is for a use that will not be listed on the CAF. If the box on line 4 is checked, the representative should mail or fax the power of attorney to the IRS office handling the matter. Otherwise, the representative should bring a copy of the power of attorney to each meeting with the IRS.

A specific-use power of attorney will not revoke any prior powers of attorney.

Line 5. Acts Authorized

Use line 5 to modify the acts that your named representative(s) can perform. In the space provided, describe any specific additions or deletions. For example, the representative's authority to substitute another representative or to delegate authority must be specifically stated by you on line 5.

Disclosure of returns to a third party. A representative cannot execute consents that will allow the IRS to disclose your tax return or return information to a third party unless this authority is specifically delegated to the representative on line 5.

Authority to sign your return. Regulations section 1.6012-1(a)(5) permits another person to sign a return for you **only** in the following circumstances:

- (a) Disease or injury,
- (b) Continuous absence from the United States (including Puerto Rico), for a period of at least 60 days prior to the date required by law for filing the return, or
- (c) Specific permission is requested of and granted by the IRS for other good cause.

Authority to sign your income tax return may be granted to (1) your representative or (2) an agent (a person other than your representative).

Authorizing your representative. Write a statement on line 5 that you are authorizing your representative to sign your income tax return pursuant to Regulations section 1.6012-1(a)(5) by reason of [enter the specific reason listed under (a), (b), or (c) under Authority to sign your return above].

Authorizing an agent. To authorize an agent you must do all four of the following.

1. Complete lines 1-3.
2. Check the box on line 4.
3. Write the following statement on line 5:

"This power of attorney is being filed pursuant to Regulations section 1.6012-1(a)(5), which requires a power of attorney to be attached to a return if a return is signed by an agent by reason of [enter the specific reason listed under (a), (b), or (c) under Authority to sign your return above]. No other acts on behalf of the taxpayer are authorized."

4. Sign and date the form. See the instructions for line 9 for more information on signatures. The agent **does not** complete Part II of Form 2848.

Tax matters partner. The tax matters partner (TMP) (as defined in section 6231(a)(7)) is authorized to perform various acts on behalf of the partnership. The following are examples of acts performed by the TMP that cannot be delegated to the representative:

- Binding nonnotice partners to a settlement agreement under section 6224 and, under certain circumstances,

binding all partners to a settlement agreement under Tax Court Rule 248 and

- Filing a request for administrative adjustment on behalf of the partnership under section 6227.

Line 6. Receipt of Refund Checks

If you want to authorize your representative to receive, but not endorse, refund checks on your behalf, you must initial and enter the name of that person in the space provided. Treasury Department Circular No. 230, section 10.31, prohibits an attorney, CPA, or enrolled agent, any of whom is an income tax return preparer, from endorsing or otherwise negotiating a tax refund check that is not issued to him or her.

Line 7. Notices and Communications

Original notices and other written communications will be sent to you and a copy to the first representative listed. If you check:

- **Box (a).** The original will be sent to you and copies to the first two listed representatives.
- **Box (b).** The original will be sent to you. No copies will be sent to any representatives.

Line 8. Retention/Revocation of Prior Power(s) of Attorney

If there is any existing power(s) of attorney that you do not want to revoke, check the box on this line and attach a copy of the power(s) of attorney. The filing of a Form 2848 will not revoke any Form 8821 that is in effect.

Line 9. Signature of Taxpayer(s)

Individuals. You must sign and date the power of attorney. If a joint return has been filed and both husband and wife will be represented by the same individual(s), both must sign the power of attorney. However, if a joint return has been filed and the husband and wife will be represented by different individuals, each spouse must execute his or her own power of attorney on a separate Form 2848.

Corporations or associations. An officer having authority to bind the taxpayer must sign.

Partnerships. All partners must sign unless one partner is authorized to act in the name of the partnership. A partner is authorized to act in the name of the partnership if, under state law, the partner has authority to bind the partnership. A copy of such authorization must be attached. For purposes of executing Form 2848, the TMP is authorized to act in the name of the partnership. However, see **Tax matters partner** on page 3. For dissolved partnerships, see Regulations section 601.503(c)(6).

All others. If the taxpayer is a dissolved corporation, decedent, insolvent, or a person for whom or by whom a fiduciary (a trustee, guarantor, receiver, executor, or administrator) has been appointed, see Regulations section 601.503(d).

Part II. Declaration of Representative

The representative(s) you name must sign and date this declaration and enter the designation (i.e., items a-h) under which he or she is authorized to practice before the IRS. In addition, the representative(s) must list the following in the "Jurisdiction/Identification" column:

- a **Attorney**—Enter the two-letter abbreviation for the state (e.g., "NY" for New York) in which admitted to practice.
- b **Certified Public Accountant**—Enter the two-letter abbreviation for the state (e.g., "CA" for California) in which licensed to practice.
- c **Enrolled Agent**—Enter the enrollment card number issued by the Office of Professional Responsibility.

- d **Officer**—Enter the title of the officer (e.g., President, Vice President, or Secretary).
- e **Full-Time Employee**—Enter title or position (e.g., Comptroller or Accountant).
- f **Family Member**—Enter the relationship to taxpayer (must be a spouse, parent, child, brother, or sister).
- g **Enrolled Actuary**—Enter the enrollment card number issued by the Joint Board for the Enrollment of Actuaries.
- h **Unenrolled Return Preparer**—Enter the two-letter abbreviation for the state (e.g., "KY" for Kentucky) in which the return was prepared and the year(s) or period(s) of the return(s) you prepared.

Students in QLITCs and the STCP. Complete Part II as follows:

1. In the Designation column, enter "Special Orders."
2. In the Jurisdiction column, enter "QLITC" or "STCP."
3. Sign and date Form 2848. Be sure to attach a copy of the letter from the Office of Professional Responsibility authorizing practice before the IRS.



Any individual may represent an individual or entity before personnel of the IRS when such representation occurs outside the United States. Individuals acting as representatives must sign and date the declaration; leave the Designation and Jurisdiction columns blank. See section 10.7(c)(1)(vii) of Circular 230.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 2848 is provided by the IRS for your convenience and its use is voluntary. If you choose to designate a representative to act on your behalf, under section 6109, you must disclose your SSN, ITIN, or EIN. The principal purpose of this disclosure is to secure proper identification of the taxpayer. We need this information to gain access to your tax information in our files and properly respond to any request. If you do not disclose this information, the IRS may suspend processing of the power of attorney and may not be able to honor your power of attorney until you provide the number.

We may disclose this information to Department of Justice for civil or criminal litigation. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

The time needed to complete and file Form 2848 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 6 min.; **Learning about the law or the form**, 31 min.; **Preparing the form**, 26 min.; **Copying and sending the form to the IRS**, 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 2848 simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send Form 2848 to this address. Instead, see the **Where To File Chart** on page 1.

* Captain, Judge Advocate General's Corps, Wyoming Army National Guard and former Senior Assistant Attorney General for the State of Wyoming. The author's interpretations and opinions expressed herein are his alone and are not to be considered an official expression or position by the United States Army or the Wyoming Army National Guard or Military Department.

** Lieutenant Colonel, Judge Advocate General's Corps, Wyoming Army National Guard and former Special Assistant United States Attorney, District of Arizona. A former aviation officer, LTC Cieply now serves as the full-time Staff Judge Advocate for the Wyoming Army National Guard.

¹ See chart at defenselink.mil/news/Sep2003/d20030903ngr.pdf; this number is comprised of National Guard and Reserve components of the Air Force, Army, Coast Guard, Marine Corps and Navy.

² U.S. News, Reserve, Guard unit tours extended: most of those serving in Iraq and Kuwait will stay for a year, Wednesday, September 10, 2003, By Jack Kelly, Post-Gazette National Security Writer.

³ WYO. STAT. ANN. §§ 19-11-101 through 19-11-124.

⁴ 54 Stat. 885 (1950).

⁵ Id.

⁶ *Fishgold v. Sullivan Drydock & Repair Corp. et al.*, 328 U.S. 275, 284 (1946).

⁷ Id.

⁸ 38 U.S.C. § 4303 (13).

⁹ 38 U.S.C. § 4303(13)&(16). It also covers time absent for funeral honor duty and time served to determine fitness for duty. The definition uses terms: "inactive duty training," which is the status Guardsmen are in during their weekend drills; and "active duty training," which is the status the Guardsmen are in for their 15 days of training above and beyond the one weekend a month. The only status that is not covered for National Guardsmen is State Active Duty status. Rarely are Guardsmen in a State Active Duty status. Usually State Active Duty is only employed when there is a state emergency, and the status typically of short duration. The rest of the time, Guardsmen are paid with federal funds, and during these times they fall under the protections of USERRA.

¹⁰ Id.

¹¹ Id.

¹² 38 U.S.C. § 4311(a). USERRA also prohibits the employer from taking an adverse employment action (eg. retaliation) against a service member because the service member took action to enforce applicable USERRA rights, testified or made a statement in connection with a USERRA enforcement proceeding, assisted with or participated in a USERRA investigation or has otherwise exercised any rights provided by USERRA.

¹³ This requirement is common in employment law and frequently referred to as the "motivating factor test." The discriminating conduct need not be the only reason the employer took the contested action, but rather only a motivating factor for the action. See, *Sauers v. Salt Lake County*, 1 F.3d 1122, 1130 (10th Cir. 1993)(Equal Protection claim).

¹⁴ This affirmative defense is similar to the "Mt. Healthy defense" found in federal employment cases, based upon the case of *Mt. Healthy City School District Board of Ed. v. Doyle*, 429 U.S. 274 (1977)(even if plaintiff's constitutional rights have been violated, the same decision to discharge would have been reached anyway).

¹⁵ 38 U.S.C. § 4312(a)(1)-(3). Note that USERRA's 5 year cut-off is more beneficial than the 4 year period provided in the MSRA. USERRA's time limit likely supersedes the MSRA's time limit, see 38 U.S.C. § 4302(a), (b).

¹⁶ Id., at (b), (c), (f)(1)(3)(A).

¹⁷ Id. at (e)(2)(A).

¹⁸ Id., at (d)(1)(A)-(C). The undue hardship exception applies to service members who are disabled and no longer qualified for the employment they vacated, or for some other reason other than disability is no longer qualified.

¹⁹ Id., at (d)(2).

²⁰ 38 U.S.C. § 4316(c)(1)-(2). Service members serving for less than 30 days are not protected from discharge without cause, but they are protected from discriminatory conduct motivated by their military service under Section 4311.

²¹ 38 U.S.C. § 4304.

²² 38 U.S.C. § 4316(a), (b).

²³ Id., at (b)(2)(A)(ii). The employer has the burden of proving waiver based upon the employee's awareness of the specific rights and benefits to be lost. If the employee was not aware of the rights and benefits subject to waiver, or the waiver is coerced, then the waiver is ineffective.

²⁴ Id., at (b)(4).

²⁵ 38 U.S.C. § 4316(a).

²⁶ Note, *TJAGSA Practice Notes: Legal Assistance Items*, ARMY LAWYER, December 1990, at 42 (citing Silver, *Operation of the "Escalator Clause" in Fringe Benefit Cases*, 60 Minn L. Rev 45 (1973); Haggert, *Veterans' Re-employment Rights and the "Escalator Principle"*, 51 Boston U.L. Rev. 539 (1971); Ross, *Returning Veterans' Rights To Fringe Benefits After Foster v. Dravo Corporation*, 68 Mil. L. Rev. 55 (1975)).

²⁷ *Alabama Power Co. v. Davis*, 431 U.S. 581, 584 (1977) (quoting *Fishold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284-285 (1946)). The language that the Supreme Court was addressing in *Alabama Power Co. v. Davis*, concerned the Military Selective Service Act of 1967, the original veterans employment protection act, which is now USERRA. The specific language in the Military Selective Service Act mandated that a veteran "be restored by such employer . . . to a position of like seniority, status and pay" 431 U.S. 581 at 584.

²⁸ INGOLD, ET AL., *infra* note 31, at 192 (quoting *Goggin v. Lincoln St. Louis*, 702 F.2d 698, 701 (8th Cir. 1983)).

²⁹ *Alabama Power Co.*, 431 U.S. 581 (1977).

³⁰ *Accardi v. Pennsylvania R. Co.* 383 U.S. 225 (1966).

³¹ *Tilton v. Missouri Pac. R. Co.*, 376 U.S. 169 (1964). See also Major Bernard P. Ingold and Captain M. Lynn Dunlap, *WHEN JOHNNY (JOANNY) COMES MARCHING HOME: JOB SECURITY FOR THE RETURNING SERVICE MEMBER UNDER THE VETERANS' REEMPLOYMENT RIGHTS ACT*, 132 Mil. L. Review 175, 191 (Spring 1991).

³² *Foster v. Dravo Corp.*, 420 U.S. 92 (1975).

³³ 38 U.S.C. § 4316 (d).

³⁴ 38 U.S.C. § 4317(a)(1).

³⁵ *Id.*, at (a)(1)(A)-(B).

³⁶ *Id.*, at (b)(1).

³⁷ 38 U.S. § 4321.

³⁸ 38 U.S.C. § 4322(a), (b).

³⁹ *Id.*, at (d).

⁴⁰ *Id.*, at (e).

⁴¹ 38 U.S.C. § 4323 (a).

⁴² *Id.*

⁴³ *Id.*, at (b). Venue is broad in cases against a State and exists in any federal district court "in which the State exercises any authority or carries out any function." *Id.*, at (c)(1). If a private employer is the defendant, the venue lies in the federal court in any district in which the private employer of the service member maintains a place of business. *Id.*, at (c)(2).

⁴⁴ *Id.*, at (a)(2).

⁴⁵ *Id.*, at (a)(2)(A)-(C).

⁴⁶ *Id.*, at (b)(2)-(3).

⁴⁷ *Id.*, at (d)(1)(A)-(C), (2)(A), (h)(2).

⁴⁸ *Id.*, at (h)(1).

⁴⁹ *Id.*, at (3), (j).

⁵⁰ *Id.*, at (i).

⁵¹ See TJAGSA Practice Note, *Army Lawyer*, December 1990, at 43 (citing cases that dealt with the Veterans Reemployment Rights—the predecessor to USERRA).

⁵² WYO. STAT. ANN. § 19-11-101 through 124.

⁵³ The term "employer" is not defined in the Act, but "employee" is defined as any person employed by any private or public employer, and "employment" includes any position as an employee with any private or public employer. The clear intent of the MSRA is to govern both private and public sector employers.

⁵⁴ WYO. STAT. ANN. § 19-11-102(a).

⁵⁵ WYO. STAT. ANN. § 19-11-102(b).

⁵⁶ One such difference concerns the total length of military service that an employee may serve and maintain their reemployment rights. Under the federal law, USERRA, the period is five years. Under the MSRA, it is a four year period. For most situations, USERRA, as a federal law, supercedes the MSRA on this issue, making the period five years. The only situation where the MSRA four year period would be applicable, is when Guardsmen are in a State Active Duty status (See *infra* note 60). Even for Guardsmen in a State Active Duty status, there are a number of exceptions to the four year rule which extend reemployment rights to employees beyond the 4 year period, most of which can be summarized generally as extensions of duty. See WYO. STAT. ANN. § 19-11-111(c). One significant extension under the MSRA is that individuals who are injured while in the line of duty, may extend the period for an additional two years. See WYO. STAT. ANN. § 19-11-111(f).

⁵⁷ See Office Of The Attorney General, State Of Wyoming, Opinion No. 77-4, dated February 15, 1977.

⁵⁸ WYO. STAT. ANN. § 19-11-108(d). However, the employer does not have to continue to pay its share of social security, insurance and retirement benefits during the absence, unless the employee elects to continue contributing to the retirement plan.

⁵⁹ WYO. STAT. ANN. § 19-11-108(a).

⁶⁰ The only time a military member would receive state pay, is when national guardsmen are in a state active duty status. Guardsmen are rarely in a state active duty status. Normally, state active duty is reserved for times of state emergency. See WYO. STAT. ANN. § 19-9-207(b), § 19-10-102.

⁶¹ WYO. STAT. ANN. § 19-11-108 (b).

⁶² Id.

⁶³ WYO. STAT. ANN. § 19-11-109(b), (c).

⁶⁴ Id., (d).

⁶⁵ WYO. STAT. ANN. § 19-11-112(a), (b).

⁶⁶ WYO. STAT. ANN. § 19-11-113.

⁶⁷ WYO. STAT. ANN. § 19-11-114(a), (b).

⁶⁸ WYO. STAT. ANN. § 19-11-115(a). The employee has up to 4 years to pay the contributions. Id., at (d).

⁶⁹ WYO. STAT. ANN. § 19-11-116(a).

⁷⁰ WYO. STAT. ANN. § 19-11-117.

⁷¹ WYO. STAT. ANN. § 19-11-118; the types of licenses are not specified in the statute, but one can assume this would include a driver's license, for example. The license remains valid during the 90 day grace period provided all other licensing requirements are complied with and payment is made before the 90 day window expires.

⁷² WYO. STAT. ANN. § 19-11-119; for example, the annual license dues paid by attorneys to the Wyoming State Bar Association. See, BYLAWS OF THE WYOMING STATE BAR, Section 4.

⁷³ Id.

⁷⁴ Id.; the legal profession, for example, requires attorneys to earn 15 continuing legal education (CLE) credits per year in order to maintain their license in good standing. See, REGULATIONS OF THE WYOMING STATE BOARD OF CONTINUING LEGAL EDUCATION, Section III.

⁷⁵ WYO. STAT. ANN. § 19-11-120.

⁷⁶ WYO. STAT. ANN. § 19-11-121(a).

⁷⁷ WYO. STAT. ANN. § 19-11-121 (b)(i)-(iii); "double damages."

⁷⁸ Id., at (d).

⁷⁹ WYO. STAT. ANN. § 19-11-123.

⁸⁰ WYO. STAT. ANN. § 19-11-105(a)(i)-(ii). The statute requires the service member to first exhaust an employer's internal administrative remedies, if any, and the service member must refrain from "unreasonably protract[ing] such proceeding." Id., at (b), (d). Litigation costs include court costs, expert witness fees (with some conditions), costs connected with any study or report necessary to prepare the party's case, and attorney's fees not to exceed \$75.00 per hour, unless a higher rate is approved by the court. Id., at (e)(vi)(A)-(C).

⁸¹ 38 U.S.C. §4303(4)(A), employer means "any person, institution, organization, or other entity that pays salary or wages for work or has control over employment opportunities," including the Federal government, and a State, among other entities. Wyoming's MSRA obviously would be unenforceable against an employer located outside of Wyoming's borders.